

ADVICE TO THE SENTENCING GUIDELINES COUNCIL

Review of Guideline
Reduction in Sentence for a Guilty Plea



The Panel's Advice to the Court of Appeal

Environmental Offences	March 2000
Offensive Weapons Offences	May 2000
Importation and Possession of Opium	June 2000
Racially Aggravated Offences	August 2000
Handling Stolen Goods	March 2001
Extended Sentences	November 2001
Minimum Terms in Murder Cases	April 2002
Domestic Burglary	May 2002
Rape	May 2002
Offences involving Child Pornography	August 2002
Causing Death by Dangerous Driving	February 2003
Alcohol and Tobacco Smuggling	July 2003

The Panel's published Advice to the Sentencing Guidelines Council

Robbery	May 2004
Reduction in Sentence for a Guilty Plea	September 2004
New Sentences: Criminal Justice Act 2003	September 2004
Manslaughter by Reason of Provocation	May 2005
Allocation Guidelines	February 2006
Custodial Sentences of less than 12 Months	March 2006
Domestic Violence	April 2006
Sexual Offences Act 2003	June 2006

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FOREWORD BY THE CHAIRMAN

In May, the Council requested the Panel to undertake an urgent review of the guideline on reduction for a guilty plea which had been published in November 2004 but without diverting from its usual practice of extensive consultation. A consultation paper was drafted, agreed and published within a month of the request from the Council. The Panel was pleased to be able to deliver its advice to the Council in less than 3 months from the close of the consultation period.

The issues raised by the Panel in its consultation paper generated a considerable number of detailed and thoughtful responses and it is clear that there remains a considerable divergence of views on some of the key aspects of the application of the reduction principle. In the Panel's view, this re-emphasises the importance of a guideline in ensuring consistency of approach in a decision that is made many times each day in courts across the country.

In many ways, the views expressed mirror the position at the time when the Panel submitted its original advice to the Council. Following detailed consideration of the responses, the Panel has concluded that little change is needed to the guideline in most respects.

Since publication of the definitive guideline, many of those sentenced have pleaded guilty but there are still significant numbers who are sentenced after a not guilty plea. There will always be a range of reasons why this should be the case but it appears clear that there are still occasions when a defendant will consider that the potential advantages of pleading not guilty outweigh those of pleading guilty at the earliest opportunity. The Panel considers that the current level of reduction continues to balance the benefits of encouraging an early plea with the need to ensure that the sentence is proportionate to the seriousness of the offence.



Professor Martin Wasik
Chairman of the Sentencing Advisory Panel

REVIEW OF GUIDELINE REDUCTION IN SENTENCE FOR A GUILTY PLEA

THE PANEL'S ADVICE TO THE SENTENCING GUIDELINES COUNCIL

Introduction

Background

1. The principle of a reduction being given for a guilty plea was created by the courts themselves and has been utilised for well in excess of 20 years. In 1994, it was given statutory recognition but in general terms only.¹ The circumstances in which a reduction should be given and the scale of the reduction evolved through decisions of the Court of Appeal. No definitive theoretical or philosophical basis for the reduction principle in England and Wales has ever been set out but similar approaches have been adopted in Scotland and the Republic of Ireland.
2. In December 2004, the Sentencing Guidelines Council issued a definitive guideline on the approach to the statutory obligation to have regard to the entry of a guilty plea when determining sentence. This followed extensive consultation, initially by the Panel, which received 62 responses to its consultation paper, and then by the Council. The request to the Panel to prepare advice followed the development of different approaches to the maximum level of reduction and to other key issues, particularly to the approach where the prosecution case was considered to be overwhelming.
3. In publishing the definitive guideline, the Chairman of the Council stated in a foreword that the purpose was "to promote consistency by providing clarity for courts, court users and victims so that everyone knows exactly what to expect".
4. In May 2006, the Council undertook a review of existing guidelines as required by section 170(4) of the Criminal Justice Act 2003. In recognition of continuing differences of view in relation to

parts of the guideline on reductions for a guilty plea, the Council requested the Panel to provide further advice. The Panel published a consultation paper on the 31st May 2006 which raised 7 separate issues and asked 19 questions about those issues. A further question sought any additional comments or suggestions. This advice follows consideration of all the 72 responses received (listed at Annex A).

5. Following the publication of the consultation paper, the approach to the calculation of a reduction received considerable media attention as a result of sentences imposed in high profile cases. In addition, in its paper "Rebalancing the criminal justice system in favour of the law abiding majority", the Home Office (at para. 2.22) emphasised the benefits of giving shorter sentences to those who plead guilty at the earliest possible point but stated that "the current rules are too restrictive, especially where an offender has been caught red-handed". The Home Office paper stated the desire to give judges more discretion so that "they no longer have to reduce the minimum sentence they impose by up to a third, regardless of the circumstances. In future, judges should be able to reduce or remove the discount for an early guilty plea altogether where the evidence against the defendant is overwhelming".

Consultation

6. This is the first occasion on which the Panel has conducted a formal review of a definitive guideline. Recognising the risk that responses tend to come only from those who want change rather than from those who support the current position, the Panel sought to emphasise the importance of responses supporting the existing guidance as well as those suggesting change is required. In particular, the Panel Chairman emphasised the importance of responses from Circuit Judges and a far greater number of such responses has been received from that source

¹ Criminal Justice and Public Order Act 1994, s.48

than in 2004. In addition to the response from the Council of Her Majesty's Circuit Judges, responses were received from (or on behalf of) over 90 Circuit Judges. The Panel has given careful consideration to each of the views expressed.

General approach

7. Although some continue to doubt the extent to which a reduction for a guilty plea can be justified, it is widely recognised that this is the approach that the law requires and there continues to be broad support for the rationale set out in the Council Guideline that the aim of the reduction is to achieve benefits for victims and witnesses and for the system as a whole. However, some respondents have drawn attention to times when the pragmatic approach feels to them to be in conflict with the interests of justice. It may be that this is at least partly attributable to the extent of reduction that has to be given where lengthy custodial sentences are imposed and which can seem to move the sentence too far away from that which the seriousness of the offence warrants. This may appear particularly striking when commentators contrast the overall sentence that would have been imposed without the reduction and the length of time that is actually to be spent in custody following the reduction after also taking into account the impact of the statutory provisions relating to early release.
8. The responses to the consultation demonstrate that there are aspects of the guideline on which there is broad agreement. However, there are also fundamental issues on which there is a significant range of views. Many judges questioned the need for a guideline at all, or, if one is required, for it to go much further than identifying the relevant factors to be taken into account.
9. The Crown Court judiciary tended to be more opposed to many aspects of the guidelines; some, in particular, considered the sliding scale to be too prescriptive. Many responses argued for greater discretion (considered in more detail at paragraph 80 below) with some suggesting that the guideline should follow the pattern of the *Seriousness* guideline and set out factors for a court to consider but leaving it to the sentencer to apply discretion in each case.
10. This was the first guideline that dealt with an issue of general application that was likely to have an impact on a very large number of cases. A guideline was considered necessary because of what were considered to be unacceptable differences in approach and because of the number of cases that were reaching the Court of Appeal in which this issue was an element. There was also lack of clarity amongst the wider public about the justification for the giving of such a reduction.
11. In its November 2003 consultation paper, the Panel emphasised that it was not for guidelines to determine whether reductions should be given at all; that was an issue for Parliament which had demonstrated a commitment to the continuation of the principle by including it in the then Criminal Justice Bill. The Panel expressed the aim of a guideline in the following way: ". a coherent statement from the Sentencing Guidelines Council on these issues should encourage consistency in the use of the reduction, and might go some way to improving public understanding of its purpose". Recent events appear to indicate that there is still considerable public uncertainty about the justification for a reduction based solely on the entry of a guilty plea.
12. If the purpose of the guideline is to produce greater clarity and certainty, then it is inevitable that a balance needs to be struck between an approach that enables a just sentence to be

imposed in a particular case and one that provides a degree of certainty and predictability that both allows the law to be accessible and understood and achieves the purpose of the reduction in encouraging early guilty pleas.

13. One of the key issues in relation to the guideline was the need for greater clarity about the purpose for which a reduction was being given. In 2003, the Panel specifically asked its consultees whether they agreed with its proposition that "the primary purpose of the reduction .. is for system based reasons rather than as a demonstration of remorse". There was strong support for this proposition and the guideline provides in Section B accordingly.
14. However, a number of responses to this consultation expressed concern about the separation of the determination of the level of reduction from the issue of remorse. There was one imaginative proposal that the determination of the level should be a two part test, one part based on the entering of a guilty plea, one part based on remorse.
15. The guideline emphasises that remorse is a factor to be taken into account at an earlier stage in the sentencing process. The Panel remains convinced that the inclusion of remorse in the factors influencing the level of the reduction for a guilty plea would blur the line between the assessment of the appropriate sentence (based on offence seriousness and offender mitigation) and the reduction given for primarily system based reasons.
16. It is clear that many have found the general approach of the guideline (including the approach to the significance of remorse) to be acceptable. The Panel has not been persuaded that there is any need for change to the general approach of the guideline.

17. It is also clear that even experienced sentencers are either not familiar with some of the detail of the guideline or are not fully aware of its significance. As described in paragraph 3 above, the purpose of the guideline was to promote consistency of approach. Whilst it appears that the guideline has been included to a substantial extent within the training exercises conducted for District Judges and magistrates, there does not appear to have been the same opportunity for those who sit in the Crown Court. Using case studies as a basis for discussion would appear likely to develop a common approach to the understanding of the impact of the guideline. In particular, the Crown Prosecution Service had noted the need for the [Judicial Studies Board to consider enhancing the training provided to ensure proper use of the guideline across the country. The Panel supports this proposal.](#)

Is there a need for a guideline?

18. In 2003, the Sentencing Advisory Panel was requested to consider preparing advice on this topic. It noted that "the sentencing principles applicable to the guilty plea are probably amongst those which have the greatest impact on day-to-day sentencing". The Panel also noted that, in his *Review of the Criminal Courts of England and Wales*, Lord Justice Auld had proposed (and the Government had accepted) that sentencing guidelines should be issued which would incorporate a system of reduction in sentences graduated so that the earlier the plea, the higher the reduction for it.
19. The history of the development of the principle is referred to in paragraph 1 above. Different approaches were developed over time that affected the implementation of the principle, notably whether, and the extent to which, a sentence should be reduced where a plea was

later in the proceedings, the maximum reduction for an early plea and the significance of a strong prosecution case independent of the admissions of the defendant.

20. The range of responses to the Panel's second consultation on this topic show that there is still a wide range of views on various aspects of the general principle and the Panel considers that a guideline is essential in order to ensure that the law is sufficiently certain.
21. **The Panel recommends that there should continue to be a guideline setting out sufficient detail to ensure consistency of approach.**

Does the current guideline comply with the statutory requirements?

22. Some responses suggested that the guideline fails to take account of what the law requires. In essence, it was argued that, as the law requires a court to take account of both the stage in the proceedings when a guilty plea was indicated and the circumstances in which this indication was given, that must include a range of matters, such as the strength of the case against the defendant and remorse, that are excluded in the existing guideline. It was further argued that the current guideline is defective because it only takes into account the stage in the proceedings at which the plea was indicated and not the circumstances.
23. The guideline requires a court first to identify when the plea of guilty was indicated and then to assess whether that was the "first reasonable opportunity". The latter test is independent from the time in the proceedings when the plea was indicated and requires an assessment of the circumstances in which the indication was given. In its consultation paper issued on the 14th November 2003, the Panel drew attention (in paragraph 26) to the need to consider both the timing of the plea and the circumstances as two

separate issues. Other aspects of the guideline consider the significance of both remorse and the strength of the prosecution case and these are considered elsewhere in this advice.

24. However, Section D of the guideline (which sets out the approach to determining the level of reduction), in para. 4.1, does use the phrase "stage in the proceedings" to encompass both the date of the indication in relation to the proceedings and the determination of the extent to which that was the "first reasonable opportunity". This is also the case in the scale set out following paragraph 4.3. The text states clearly that it is the "first reasonable opportunity" that is the crucial test but it seems that the descriptions used have produced some confusion.
25. **The Panel has concluded that the guideline properly takes into account both the stage of the proceedings and the circumstances in accordance with the provisions of section 144 of the Criminal Justice Act 2003 and that no change is required on this basis. However, the terminology used in the guideline appears to have caused some confusion and it may be sensible for any re-draft to use alternative forms of expression.**

First reasonable opportunity

26. The crucial test is whether the time at which an indication of guilt was given was the first reasonable opportunity. The guideline states clearly that this will vary from case to case but, in order to provide assistance in developing a consistent approach, sets out examples in Annex 2 to illustrate factors that may be relevant. Prior to the guideline there had been significant differences in approach.
27. One of the dilemmas that the guideline seeks to resolve is that a defendant cannot *plead* guilty until there is a court appearance but the system savings can be considerably greater where a

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- guilty plea is anticipated by the prosecuting authorities before that hearing takes place. The guideline seeks to recognise that there is a broad spectrum of cases including both those where a defendant can reasonably be expected to know enough at interview to indicate a plea and those where the issues are highly complex or a critical fact needs to be verified. One example of the latter would be where a person charged with handling stolen goods required time to confirm that the goods had, in fact, been stolen.
28. An issue was raised as to whether it was legitimate for the guideline to encompass an indication of plea before the first court hearing. It was argued that the reference in the statute to the "stage in the proceedings" had to be taken as referring to "proceedings before [a] court" as both those phrases were in the same subsection, even though there was also reference to an indication of an intention to plead guilty rather than simply to a plea of guilty.
29. That interpretation of the law was not generally accepted by those who responded and it was accepted as quite proper for the guideline to provide for earlier indications. This view was even shared by many of those who considered that account should not be taken of such an indication until at least the first court hearing.
30. Whilst there appears to be broad agreement to the generality of this part of the guideline (and many suggest that no change is required), a number were strongly opposed to the suggestion that the first opportunity could be prior to the first court appearance. It was argued that this properly should be dealt with as personal mitigation and that the guideline was confusing in referring to it both as potentially personal mitigation (Part B, para. 2.3) and as a factor that influenced the decision on the first reasonable opportunity (Annex 2, para. 3(b)).
31. Whilst some of those arguing for change would be content with the first court hearing being identified as the first opportunity, others advocate waiting until advance information is provided in those cases where there is an entitlement to it.
32. The guideline is based on a pragmatic approach – early guilty pleas produce maximum savings. In many circumstances, the indication of an intention to plead guilty at or before charge will have an effect on the resources applied to the case by both the investigating and prosecuting authorities. In those circumstances, the greatest saving is achieved by such an indication. An approach attributing a greater reduction where an indication of plea is given at or before charge presupposes that every defendant would have sufficient information to understand the allegation that is being made. Respondents to the Panel's latest consultation recognised that this will be the situation in many cases but not in all. In some cases, it will be proper to allow fuller consideration by the defence.
33. Recognising the impossibility of providing a clear description of when the first reasonable opportunity would occur, the definitive guideline states that this is a decision best left to the discretion of the court but includes some guidance to enable the criteria to be consistently applied.
34. The overall strength of the responses to this consultation suggests that no change is required to the approach of the guideline. Annex 2 emphasises the importance of ensuring that a defendant had sufficient information on which a guilty plea decision could have been made (Annex 2, para. 3, note following (b)) but there will be many occasions when it will be proper to expect an indication of guilt prior to a court hearing and/or prior to the provision of any advance information. Whilst it is recognised that the guideline refers to admissions under

interview potentially being regarded as personal mitigation and an indication of an intention to plead guilty whilst under interview as a factor potentially relevant to the determination of the first reasonable opportunity, the Panel does not consider that these are incompatible.

35. **The Panel recommends that there should be no change to this part of the guideline.**

Offences triable only on indictment

36. Some responses indicated that there is uncertainty over the first reasonable opportunity where cases are sent to the Crown Court for trial. Annex 2, para. 3(c) refers to sentence in the Crown Court for an offence triable either way and indicates that the reduction for an indication of plea at the first hearing in the Crown Court should be less if there had been an opportunity to indicate a plea in a magistrates' court but more than where the plea had been entered after a trial date had been set. A maximum of 30% is suggested. Where the offence is one triable only on indictment, there would be no opportunity to indicate a plea in a magistrates' court and the first opportunity would therefore be at the first hearing in the Crown Court (assuming it was not reasonable to expect the indication to have been given during interview in a police station).

37. **The Panel draws attention to the emphasis in the current guideline on the importance of the judgement of the court in assessing whether the plea was indicated at the first reasonable opportunity and recommends that there is no change to the guideline other than to make it clear that the first reasonable opportunity in relation to an offence triable only on indictment is likely to be during the police station stage but, if not, is likely to be at the first hearing in the Crown Court.**

Approach to calculation of reduction for later pleas

38. There was a wider spread of views on the way the guideline steers the approach (set out in Section D of the guideline) to the calculation of the level of reduction where a plea is entered other than at the first reasonable opportunity. The guideline provides for a maximum of one third where guilt is admitted at the first reasonable opportunity and for a lesser reduction when the indication of plea comes later. The effect of that is set out in textual form in paragraph 4.2 and then, pictorially, as a scale; both provide a maximum reduction of one third, one quarter and one tenth at three stages. **It seems clear that these are being interpreted as entitlements rather than as maxima and it would be helpful if greater emphasis was given to the fact that each level is a maximum.**
39. 5 factors are set out in paragraph 4.3. These state that the crucial part of the test is whether the stage in the proceedings at which the guilty plea was indicated was the first reasonable opportunity. The maximum reduction should only be available in such circumstances with lower levels of reduction where the indication is at a later stage. Some greater elaboration of "first reasonable opportunity" is provided in Annex 2 but it is emphasised that this is an issue for the judgement of the court on the particular facts of a case within the principles set out in the guideline.
40. This approach would appear to be viewed with least satisfaction by those who sit in the Crown Court. It was generally acceptable to most other groups including the Criminal Bar Association, whose members, presumably, practice predominantly in the Crown Court. Those whose experience is predominantly in a magistrates' court tended to welcome the simplicity and clarity of the approach.

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41. The Panel considers that (subject to the recommendation made in paragraph 25) describing the approach as a scale and setting it out in both textual and pictorial form is generally acceptable.
 42. The Panel recommends that there should be no change to this part of the guideline.

Is one third the appropriate maximum?

43. There appears to be general support for the beneficial impact of the reduction principle in increasing guilty pleas. The Panel has not previously been able to identify any source of information that assists in identifying a trend in guilty pleas since January 2005; anecdotal evidence has suggested an increase in guilty pleas where the charge is murder. However, information is now available for offences sentenced during 2005.
44. Since 1999, the proportion of defendants who pleaded not guilty in relation to indictable offences in the Crown Court has reduced from 40% to 36%. The percentage of those who are found guilty after a not guilty plea has remained fairly constant at around 35%.²
45. Accordingly, as regards indictable cases sentenced in the Crown Court, a very high proportion of defendants (generally above 85%) who are sentenced have entered a guilty plea. The main category of offences with a lower rate of guilty plea is sexual offences where the rate tends to be around 60%. Generally the guilty plea rate in respect of all indictable offences sentenced in the Crown Court is high and is slowly increasing. There does not appear to be any statistically significant change between 2004 and 2005.
46. The purpose of the guideline was to increase consistency in the use of the reduction provided for by statute rather than to influence the extent to which it increased the number of guilty pleas. As can be seen, a high proportion of sentenced defendants have pleaded guilty and the scope for increasing that number is likely to be limited. However, it has not been possible to ascertain the extent of reduction that has been given in individual comparable cases or whether there has been any change; the Panel has been unable to discover any source of information that would assist in calculating that effect other than at the most general level of detail described above.
47. Although there was broad agreement amongst the Panel's consultees on a maximum reduction of one third, some responses indicated that it was too generous, others that there should be scope for a greater reduction in exceptional cases or where the savings were unusually large. Two responses suggested that the Panel should explore ways of calculating the effect that flowed from the guilty plea. Another response suggested that defendants can be separated into 3 broad categories – those who will plead not guilty whatever incentive is offered, those who will always plead guilty regardless and those who can be persuaded to plead guilty. It was implied that it was the last group that should be the focus of attention.
48. Those who suggested that one third was too generous tended to opt for 25% either as the maximum reduction in any circumstances or as the maximum in the absence of exceptional circumstances. There was a further suggestion that the level of reduction could be better calculated by reference to more than one element – for instance, part could be "earned" by pleading guilty, part by remorse.

² Criminal Statistics 2003, Table 3.8; Criminal Statistics 2004, Table 2.10

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49. Those who suggested a wider range could contemplate up to 50% where the early plea is combined with additional factors such as assistance to the prosecution (though this would normally be expected to be dealt with as a separate issue) or other exceptional factors. **Recently introduced statutory provisions now make specific provision for circumstances where a defendant has given material assistance to the prosecution and the reduction for a guilty plea does not seek to cover such matters. Again, it would be helpful if the guideline emphasises that this is a separate issue to which the guideline does not apply.**
50. Responses also raised a more general issue regarding the meaning of "maximum" and the extent to which it limits judicial discretion, a point that came through on many occasions in the responses. This aspect is dealt with separately below.
51. Since the approach to providing a reduction at a maximum of one third has now been applied for many years, it seems reasonable to conclude that that level is effective in achieving the purpose of the reduction – to maximise the number of guilty defendants who plead guilty. The Panel has not been able to identify any approach that would assist in determining whether a smaller level of reduction would be equally effective or a larger reduction would be more effective.
52. **Overall, the Panel has concluded that a maximum of one third commands general support.**

Is 10% sufficient for a late plea?

53. The variety of views in responses demonstrates the dilemma of providing a minimum level of reduction that is sufficient incentive whilst leaving sufficient gap between that and the maximum available for an early plea. Representative groups generally supported the

current approach and saw dangers in any change. Circuit Judges expressed differing views. Some suggested that this part of the guideline is ignored in practice, others that it was generally acceptable but, in the two types of case cited (serious sexual cases and lengthy trials), could be insufficient to reflect the benefit gained. However, others doubted whether a greater reduction could be justified in either example. The statistical information referred to in paragraph 45 above indicates that the lowest overall rate of guilty plea is in relation to sexual offences, one of the types of offence where the impact on the victim of giving evidence is likely to be greatest and where a guilty plea, even one entered at a late stage, is likely to be of significant benefit even though it will not have spared the anxiety of victims or witnesses over the time before the plea is entered.

54. Where change was advocated, suggestions include a simple statement that a late plea will attract a lower reduction than an early plea, provision of a range for the court to operate within and an increase in the starting point to 20%.
55. The Panel recognised that there is a powerful argument that provision of the same level of reduction (or an only marginally lower level) for late pleas as for early pleas will simply encourage the delay of a plea. The present guideline has been in force for less than 2 years and it is likely that the impact of the lower level of reduction for later pleas will take some time to be effective in practice. Accordingly, it would be counter productive to change this aspect of the guideline at this stage. It may be helpful to emphasise that this guideline (as with others) cannot be expected to cover every situation and is designed for the general type of case. Where there is an exceptional level of benefit, the court is entitled to take that into account in fixing the level of reduction.

56. Overall, the Panel has concluded that the guideline indicating a 10% reduction for a late plea provides sufficient distinction between the benefits of early and late pleas to act as an incentive to plead guilty early. In exceptional cases, there is sufficient latitude to enable variation in that level.

Should there be an upper ceiling?

57. The Panel recognised that a blanket approach of a reduction of up to one third could lead to very considerable reductions where lengthy custodial sentences were being imposed. In such cases, the level of reduction might appear to have been greater than was necessary to encourage a timely guilty plea and to have resulted in a sentence that no longer reflects the seriousness of the offence.

Indeterminate sentences

58. The guideline already contains a maximum reduction of 5 years in relation to the fixing of a minimum term following the imposition of a mandatory life sentence for murder. The approach in relation to this minimum term was incorporated into the guideline following responses to the Council's consultation in 2004 on its draft guideline and no provision was made in relation to other indeterminate sentences (save for paragraph 5.1 in relation to certain indeterminate sentences for dangerous offenders prior to the Criminal Justice Act 2003).

59. In this consultation, the Panel sought views on whether any change was required to the guideline on this aspect and on whether the approach to the fixing of a minimum term should be the same for all indeterminate sentences. The consultation paper drew attention to the guideline in respect of murder (and the specific statutory provision preserving

the obligation to have regard to any guilty plea when fixing the minimum term) and to differing provisions in other circumstances where Parliament had established a minimum sentence.

60. Some consultees indicated that they had no experience on which they could proffer any response on the more general issue of whether any change was required to the existing guideline. Nonetheless, a substantial number of responses were given and the vast majority argued for no change in the current provisions insofar as they apply to sentencing for murder. A small number of comments suggested a lower maximum – 2 or 3 years or 20% of the sentence was advocated – and some considered that the structure was too inflexible.

61. On the basis of the responses, the Panel considered that there was no reason to propose a change to the aspect of the guideline that applies to the minimum term fixed following conviction for murder.

62. There are other sentences in which a court is obliged to fix a minimum term, notably in relation to the imposition of a discretionary life sentence or of imprisonment for public protection. The process by which that minimum term is fixed differs from that adopted when fixing a minimum term following conviction for murder since a court will identify the length that the sentence would have been if a determinate sentence had been imposed, apply any reduction for a guilty plea and then halve the length to produce the minimum term.

63. The guideline presently provides a maximum for the level of reduction only in relation to a life sentence imposed following conviction for murder. In this consultation, the Panel sought views on whether the approach should be the same for all indeterminate sentences. Whilst

some responses argued that the unique approach to sentencing for murder justified a different approach from other sentences, others considered that the approach should be common for all situations where a court is required to fix a minimum term. Accordingly, if the recommendation in paragraph 61 is accepted, this would provide for a maximum reduction in the minimum term of 5 years (that is, a maximum reduction of 10 years in the notional determinate sentence).

64. One response drew attention to the possibility that an offender who pleaded guilty was also more likely than one who pleaded not guilty to gain access to rehabilitative programmes and, therefore, to the possibility of earlier release by the Parole Board; in those circumstances, it was argued, the reduction in the minimum term for the guilty plea might need to be less in order to keep the overall benefit in proportion.
65. Although there was a small majority of responses that favoured a common approach, the Panel was conscious that a ceiling of 5 years on a minimum term would only affect those sentences where the notional determinate sentence exceeded 30 years. Sentences at this level are extremely rare (see paragraph 72 below).
66. On balance, given the procedure adopted by the court when fixing a minimum term for sentences other than the mandatory life sentence following conviction for murder, the Panel has concluded that it is better to keep the approach the same as for other determinate sentences. This would result in there being no ceiling for such sentences.
67. **The Panel recommends that the approach adopted for determinate sentences should be applied to all indeterminate sentences other than those imposed following conviction for murder. This would mean that there was no maximum on the level of reduction.**

68. **Some consultees noted that the dangerousness sentences referred to in paragraph 5.1 (see paragraph 58 above) had now been replaced by the provisions in the Criminal Justice Act 2003. If the guideline is to be revised, it is suggested that the opportunity should be taken to adjust these references as appropriate.**

Determinate sentences

69. The Panel's consultation also sought to obtain views on whether it would be right to fix a ceiling for the generality of offences. This could be an overall limit on the maximum reduction or it could be a proportion or sliding scale which sought to ensure that there was a sufficient incentive in relation to lower sentences but not too much for higher sentences. With regard to determinate custodial sentences, some of those who responded considered it unnecessary to fix a ceiling whilst others expressed concern about the large reduction that can follow where the court imposes a long custodial sentence (or a large fine). One response put forward the view that it is in difficult and lengthy cases, where long sentences are imposed, that a proportionately larger incentive is required.
70. The Panel had identified the possibility of creating a sliding scale of maximum reduction in order to preserve the balance between the level of incentive and the overall sentence. However, there was little support for such a scale which generally was thought to be likely to make the approach too complicated. Those who supported a ceiling commonly suggested that it could be fixed at 6, 5, 3 or 2 years with most supporting 5 years. That length may have been preferred because it is already provided for murder but it needs to be remembered that the reduction for murder relates to time served in custody rather than to the overall length of the sentence.

71. Where responses advocate change, they tend to be arguing either for a guideline that provides general guidance only (leaving greater scope for judicial discretion) or for a more sophisticated approach to gradations in the level of reduction.

72. The Panel is conscious of the need to maintain a balance between a sufficient incentive and a just sentence whilst developing a system that is clear and easy to use. If the ceiling for minimum terms following conviction for murder were adopted more generally, it would equate to 10 years for a determinate sentence – this would only be less than the current maximum of one third where a sentence of more than 30 years is imposed, which is extremely rare. Indeed, the number of longer custodial sentences is small. Of the 74,215 custodial sentences imposed for indictable offences in 2004, 675 (less than 1%) were for 10 years or more and 1967 (2.65%) were for 7 years or more.

73. **The Panel has not been persuaded that the introduction of a ceiling for determinate sentences would be beneficial. Any benefits that might arise would be outweighed by the complexity that would result, the small number of cases in which it would make a difference and the potential for unfairness around the limits.**

Fines

74. The Panel also considered whether a ceiling could be introduced for fines. Most fines are of a level where a ceiling is unlikely to be needed. However, in respect of certain offences very large fines – perhaps in excess of £500,000 – will occasionally be imposed. In those circumstances, a reduction of one third may produce a greater benefit than is necessary or justifiable and a lesser reduction is more likely to be appropriate.

75. **The Panel has concluded that, whilst there should be no specific upper limit to the reduction applicable to a financial penalty, where a substantial fine is being imposed, a court should be expected to balance the level of reduction with the benefits arising from the guilty plea.**

Significance of overwhelming prosecution case

76. One of the most contentious areas of the review has been the extent to which the strength of the prosecution case should impact upon the reduction in sentence. The extent to which practice had differed in the past was one of the main reasons for the original decision to formulate a definitive guideline and it is not surprising that there continue to be strongly held views. In the responses to the Panel's consultation, some consider the current approach set out in the Council Guideline to be "workable, practical and not too complicated"; others consider that it results in considerable injustice.

77. No response offers a definition of when a case is "overwhelming" but one points out that the difficulty in devising a definition should not be underestimated. Nor should it be overlooked that, even where the prosecution case is very strong, arguments about such issues prior to sentence can still place a considerable burden on the court and significantly slow the decision making process. Whilst this may be an issue that has a significant effect in the Crown Court, concerns have been raised constantly since the publication of the guideline in relation to sentencing in a magistrates' court, particularly for offences such as driving whilst disqualified and driving with excess alcohol.

78. Much of the publicity around recent high profile cases that has been critical of the reduction has drawn attention to the fact that the prosecution case was said to be overwhelming. This may,

however, simply mask the real concern, which is about the appropriateness of giving a reduction for a guilty plea at all. That is an issue beyond the remit of the Council and the Panel.

79. The guideline on reduction for a guilty plea provides for a maximum reduction of one third where guilt is admitted at the first reasonable opportunity and for a lesser reduction when the indication of plea comes later. The effect of that is set out in textual form in paragraph 4.2 and then, pictorially, as a scale; in both cases providing in three stages for a **maximum** reduction of one third, followed by a reduction of one quarter and, finally, one tenth. It seems clear that these figures are being interpreted as **entitlements** rather than as maxima. In relation to the overwhelming strength of the prosecution case, the guideline states clearly that this in itself is not a reason for changing the approach to the level of reduction.
80. A number of proposals have been advanced in responses. Where change was suggested, it tended either to be that the decision on the extent of the reduction should be left to the discretion of the court (though recognising that some reduction will be justified) or reducing by half the reduction that would otherwise have been given. As noted in paragraph 5 above, the Home Office has indicated a desire to give a court greater discretion to reduce the extent of the reduction in such circumstances.
81. This issue raises an important consideration of the extent to which the guideline (or, at least, this aspect of it) restricts the discretion of the court. This guideline is quite different from those that relate to specific offences or to matters of more general sentencing principle. Specific offence guidelines provide a starting point and a sentencing range so as to produce greater consistency of approach whilst leaving considerable scope for the court to adjust the sentence to reflect the circumstances of the

offence and the offender. General guidelines have tended to identify factors and approaches without a great degree of prescription. The Panel has reviewed the extent to which it is possible for a court legitimately to depart from this aspect of the guideline.

82. It has been stated many times that a guideline is simply a guideline. A court is obliged to have regard to a guideline but may depart from it providing reasons are given. It would appear to be legitimate to argue that a court currently has the discretion to decide, in an individual case, that the particular circumstances warrant a departure from the approach set out in the guideline. Reasons will be given and an aggrieved party can seek review of that decision.
83. One approach, therefore, may be to remind courts that it is possible to depart from the guideline, that reasons must be given and that the Court of Appeal and Divisional Court will then develop a line which demonstrates the criteria against which such departures will be judged.
84. However, the primary function of this guideline was to provide the certainty that was considered beneficial in the broader interests of justice and to provide a pragmatic and consistent approach that continued to encourage early guilty pleas. Part of the argument to support that approach was the benefit that comes from the defence having confidence that a certain level of reduction will flow from a decision to plead guilty – the more courts depart from that standard approach, the less certainty there will be.

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85. The Panel recommends that the concerns should be met by the guideline being amended to emphasise:
- a) that there should be a presumption in favour of the full reduction being given where a plea was entered at the first reasonable opportunity,
 - b) the statutory provision that the guideline can be departed from where reasons are given,
 - c) the fact that the prosecution case was exceptionally strong without relying on admissions from the defendant could be such a reason.

Impact on multiple summary only offences

86. There was another area where responses indicated concerns that the standard approach to the calculation of a reduction risked causing injustice. Where a court is faced with a number of summary only offences, for example two or more offences of driving whilst disqualified or a mixture of public order and driving and assault offences, it is limited to a maximum of 6 months imprisonment regardless of the number of offences. Where a court is imposing sentence for an either way offence, the Guideline provides (at paragraphs 5.5 and 5.6) that the maximum sentence in a magistrates' court may still be imposed where, in the absence of a guilty plea, the case would have been sent to the Crown Court for sentence – this is not an option where the offences are triable summarily only.
87. Part E, paragraph 5.4 of the Council Guideline draws attention to the ability to impose consecutive sentences but indicates that there should still be some recognition of the guilty plea. For those sentencing multiple offenders in a magistrates' court, this was raised as a difficult issue. It was recognised that the removal of any reduction could encourage an increase in not guilty pleas but there continued to be concern that a court could not sentence properly a prolific offender who has committed the more serious summary offences, often on a number of occasions.
88. It was also recognised that the level of reduction may not, in practice, be of any great significance when account is taken of actual release dates and so may be unlikely to weigh too heavily in the mind of a defendant deciding whether or not to plead guilty.
89. Taking into account the whole of these circumstances, it may be appropriate for the guideline to provide that, regardless of the timing of the guilty plea, it is possible to impose the maximum sentence where an offender has committed two or more summary offences where the court considers that that is justified by the persistent offending of the defendant or in other exceptional circumstances.
90. The Panel recommends that the guideline incorporate a provision that enables the maximum sentence to be imposed following conviction of a summary offence where that is justified by the seriousness of the offence and the offender is convicted of more than one summary offence at the same time or there are other exceptional circumstances (including the persistent offending of the offender).

Application to ancillary orders

91. Paragraph 2.5 of the Council Guideline establishes that the reduction principle applies to the punitive elements of a sentence. This recognises that the decision on length or extent of rehabilitative elements needs to be assessed according to different criteria. In addition, the paragraph states that the principle has no effect on ancillary orders. On the whole, those orders are designed for purposes other than

punishment of the offender (with many – for example a prohibition on working with children – being designed to protect the public from the risk of further harm) but some will also have a partly punitive effect, in particular driving disqualification.

92. The Panel's consultation paper noted that some courts were being urged to apply the reduction when considering the length of a disqualification from driving or the number of penalty points to be endorsed on a driving record. It sought views on whether the approach in the guideline ought to be changed. Although there was a range of views in the responses, there was general support for the approach set out in the guideline.
93. One response questioned the legality of excluding ancillary orders. It was argued that an ancillary order is part of the sentence and, since Parliament had required a court to take into account a guilty plea when determining sentence, it was not open to a guideline to exclude ancillary orders from that provision. The Panel had previously concluded that the guideline would not prevent the application of the principle to the sentence as a whole but was guiding the way in which the principle applied to parts of it.
94. Where responses disagreed with the guideline, this tended to be solely in relation to disqualification from driving rather than to ancillary orders generally. Some responses suggested that such an order was clearly punitive (at least in the eyes of the disqualified driver) and, therefore, ought to be affected by the principle.
95. This general issue was considered as part of the Guideline and the Council concluded that it would be inappropriate to reduce sentences that are primarily intended for rehabilitation (para. 2.5) or for public protection (para. 5.1). Many

sentences (or parts of sentence) have more than one aim. Since the purpose of the reduction is to provide a positive incentive to plead guilty, the approach has been to apply the principle to those parts that are primarily punitive. The Panel and Council previously concluded that it is appropriate to exclude all ancillary orders and the Panel has not been convinced that a change needs to be made.

96. **The Panel recommends that no change is required, that the reduction should not be applied to ancillary orders and that it should be confirmed that the principle does not apply to disqualification from driving.**

General Issues

97. A small number of recommendations were made for bodies other than the Panel, mainly regarding the statutory provisions requiring release at the half way point of a custodial sentence. Concerns were expressed that the current system both made it difficult to justify sentences that were imposed and increased public disquiet. This had a consequential effect on the extent to which the reduction principle could be justified.
98. Although not responding to the consultation, the Commission for Racial Equality has reminded the Panel of its obligations to consider the race equality implications of its proposals. The Panel considered this aspect when formulating its advice in 2004. It took the view that any discriminatory effect was likely to come from the existence of the reduction rather than from the way it would be applied under the guideline. There is research that indicates that defendants from some minority ethnic groups are less likely to plead guilty; inevitably, those convicted are likely to receive more severe sentences than those who plead guilty at an early stage.

99. The Panel has again considered the available information in relation to both race and gender equality. It is important that clear information is readily available to all defendants about the consequences of any decision whether or not to enter a guilty plea. The Panel is aware that the Council is seeking to ensure that there is a common approach at all Police Stations and recommends that this is pursued as a matter of urgency.

ANNEX A

RESPONSE TO CONSULTATION ON REDUCTION IN SENTENCE FOR A GUILTY PLEA

In accordance with the duty imposed by section 171(3) of the Criminal Justice Act 2003, the Panel issued a consultation paper on the 31st May 2006.

Copies of the consultation paper were sent to 54 individuals and organisations including the Panel's 33 regular consultees and Resident Judges at each Crown Court Centre in England and Wales. It was also published on the Panel's website and in the Justice of the Peace Journal.

Responses were received from:

Action Against Business Crime

Yusef Azad, National AIDS Trust

HH Judge Michael Baker QC

HH Judge Trevor Barber

Philip Beardwell, Solicitor-Advocate, PCB Solicitors

Terry Bernstein

HH Judge John Bevan, QC

HH Judge Inigo Bing

Simon Bourne-Arton, QC and criminal practitioners on the NE Circuit

HH Judge Brodrick

The Honourable Mr Justice Calvert-Smith

HH Judge Frank Chapman

HH Judge Philip Clegg

John Clucas

Council of HM Circuit Judges

Criminal Bar Association

Crown Prosecution Service

HH Judge John Diehl, QC

Ailsa Douglas J.P.

HH Judge D. Elgan Edwards D.L, Honorary Recorder of Chester

David Ely, Magistrates' Association – South East London Branch

HH Judge William Everard

David Faulkner, University of Oxford Centre for Criminology

Abigail Finnegan, Member, Victims' Advisory Panel

Alisdair A Gillespie, Reader in Law, De Montfort Law School

HH Judge Globe QC on behalf of all the 20 Circuit Judges sitting at Liverpool

HH Judge Alan Goldsack, QC

The Honourable Mr Justice Gross

HH Judge Stephen Gullick taking account of the views of Circuit Judges sitting at Bradford

Nina Hall JP, North East London Magistrates' Association

HH Judge Paul Hoffman

Justices' Clerks' Society

HH Judge Roger Keen, QC

HH Judge Peter Lakin on behalf of all the Judges who sit regularly at Manchester Crown Court

HH Judge Paul Lambert

Stephen Lamley J.P.

Law Society Criminal Law Committee

London Criminal Courts Solicitors' Association

Magistrates' Association

Magistrates' Association – Shropshire Branch

HH Judge Milford, QC

HH Judge William Morris

Nicholas Moss J.P.

HH Judge Daniel Pearce-Higgins

HH Judge David Pitman

Police Federation of England and Wales

Public and Commercial Services Union on behalf of staff in HMCS including magistrates' court legal advisers

HH Judge David Radford

HH Judge John Reddihough

Revenue & Customs Prosecutions Office

HH Judge Rivlin on behalf of Judges at Southwark Crown Court

HH Judge Anthony Russell, QC

Alec Samuels, Retired Magistrate

HH Judge John Saunders QC

Serious Fraud Office

Serious Organised Crime Agency

Michael Shaw J.P.

Toby Simon J.P.

Society of District Judges (Magistrates' Courts)

The Honourable Mr Justice Andrew Smith

HH Judge James Stewart QC

HH Judge Michael Stokes QC

HH Judge Granville Styler

HH Judge Tabor, QC and HH Judge Picton

HH Judge Anthony Thorpe

HH Judge Simon Tonking

George Tranter, former Justices' Clerk

The Honourable Mr Justice Treacy

TV Licensing

HH Judge Christopher Tyrer

Victims' Voice

Youth Justice Board for England and Wales (YJB)

The Sentencing Advisory Panel is an independent advisory and consultative body originally constituted under sections 80 and 81 of the Crime and Disorder Act 1998 (which came into force on 1 July 1999) and now constituted under section 169 of the Criminal Justice Act 2003. Its function, prior to implementation of the relevant provisions in the Criminal Justice Act 2003, was to provide fully researched, objective advice to the Court of Appeal to assist the Court when it framed or revised sentencing guidelines.

The Criminal Justice Act 2003 established a new Sentencing Guidelines Council with responsibility for issuing sentencing guidelines. With effect from 27 February 2004, the Sentencing Advisory Panel submits its advice to the Council rather than to the Court of Appeal.

The following were members of the Panel at the time this advice was delivered to the Sentencing Guidelines Council:

Professor Martin Wasik (Chairman)

His Honour Judge Anthony Ansell

Professor Andrew Ashworth QC (Hon)

His Honour Judge Philip Clegg

Mrs Joanna Crowley

Amritlal Devani

Mrs Anne Fuller OBE JP

Professor Frances Heidensohn

David Mallen CBE

Michael Morgan

Judge Howard Riddle

John Staples

Ms Joan Webster QPM

Christopher Woolley

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Head of Sentencing Guidelines Secretariat: Kevin McCormac OBE
Secretary to the Panel: Mrs Lesley Dix

